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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re COBY B., a Person Coming Under  
the Juvenile Court Law.

H037849  
(Santa Clara County  
Super. Ct. No. JD13930)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

LORI B.,

Defendant and Appellant.

Appellant Lori B. challenges the juvenile court's dispositional order limiting her visitation with her son Coby to monthly supervised visits in a therapeutic setting. She claims that this order was an abuse of discretion because it was not justified by any concerns about Coby's well-being or any threat to his physical safety and will threaten her ability to reunify with Coby. We find no abuse of discretion and affirm the court's order.

## **I. Background**

Coby was born in 1998 to Lori and Robert, who were married at the time. Lori and Robert separated in 2006, and they shared custody of Coby initially with Lori the primary caretaker. Lori insisted on home schooling Coby. Coby had “significant emotional issues, had no boundaries, and had been out of control physically and emotionally . . . .” However, Lori insisted that Coby had “no anger issues.” In October 2008, the family court mediator observed that Coby’s behavior improved when he was in Robert’s care, where boundaries were set and Coby had more structure and more socialization.

There were numerous disputes over custody and visitation, and indications that Lori was alienating Coby from Robert. Coby tended to become “defiant” after visits with Lori. Child Protective Services (CPS) received numerous unfounded reports that Robert had abused Coby. Lori admitted that she encouraged Coby to report that Robert had abused him.

In late 2008 the family court in Stanislaus County, which had jurisdiction over the dissolution matter, ordered a full custody evaluation and directed that primary custody would shift to Robert if Lori did not pay her half of the evaluation fee by March 12, 2009. Lori did not pay the fee, and primary custody shifted to Robert on March 18, 2009. Robert placed Coby in public school.

Due to a string of problems, the family court subsequently placed limits on Lori’s ability to visit Coby’s school and on her access to Coby by telephone when he was in Robert’s care, and it designated that Robert was to arrange all of Coby’s medical appointments. Lori responded to these limitations by obtaining an emergency protective order in Santa Clara County that granted her temporary custody of Coby. After the Stanislaus judge and the Santa Clara County judge communicated, those orders were vacated, and Robert resumed custody of Coby.

Robert obtained therapy for Coby, attended parenting classes, sought a psychological evaluation of Lori, and urged the court to require her visits to be supervised. The family court confirmed in September 2009 that Robert would retain primary custody of Coby. In January 2010, the family court temporarily suspended Lori's visitation with Coby pending a mediation, and it ordered a psychological evaluation of Lori. The evaluation never happened. Lori claimed that she did not have the evaluation because she could not afford to pay for it, but Robert had offered to pay for it.

Lori interfered with Robert's efforts to obtain therapy for Coby, and there were further indications that she was coaching Coby to report that Robert had abused him. Coby's therapist, who described Coby as "extraordinarily volatile," diagnosed him with "Oppositional Defiant [*sic*] Disorder with a rule out for a Mood Disorder." In 2009 and again in 2010, Coby was "placed on a 5150 hold" "due to displaying uncontrollable behavior."

In January 2011, the family court granted Robert sole legal and physical custody of Coby. In July 2011, after a visit with Lori, Coby returned to Robert's home and "was behaving defiantly." After "ranting and raving for about 3 hours," Coby began banging on doors and walls and then kicked Robert in the groin. The next day, Robert contacted the police after Coby failed to return home. Robert agreed to Coby's placement at the Bill Wilson Center.<sup>1</sup> In August 2011, after Coby began treatment at the Bill Wilson Treatment Center, the family court ordered that all of Lori's visits with Coby would be supervised by the Bill Wilson Center or by CPS.

The Santa Clara County Department of Family and Children's Services (the Department) became involved in October 2011 "due to a breakdown in communication between Coby and his father in a therapy session that resulted in the father saying that he

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<sup>1</sup> Robert lived in Santa Clara County, where the Bill Wilson Center is located.

was ‘done,’ with Coby and the Department and . . . ‘I’m not going to kill myself or ruin my life over him.’” Apparently, at that moment, Robert was “angry because the Department initiated supervised visits with the mother.” Robert subsequently told the social worker that his comments were just the product of “years of built up frustration,” and he was not “‘done’” with Coby. Robert believed that Coby’s contact with Lori caused his behavior to deteriorate. Although Robert admitted that he had experienced verbal “outbursts” in dealing with Coby’s “challenging behaviors,” Robert was willing to continue with family therapy and “willing to do the work necessary to improve his relationship with his son.”

Coby’s therapist believed that Coby “may have become accustomed to a chaotic environment while in the care of his mother, and it may be very difficult for him when things are going well, so he has a part in creating the chaos.” The therapist believed that Coby’s interactions with Lori were “not age appropriate.” She had concerns about Lori’s parenting skills and noted that Lori treated Coby as a “peer” rather than as her son. Lori “did not demonstrate any accountability for her contribution to Coby’s issues.”

Coby was detained on October 5, 2011. A petition was filed alleging, under Welfare and Institutions Code section 300, subdivisions (b) and (c), that there was a substantial risk of harm to Coby in Robert’s care due to Coby’s increased behavioral problems and Robert’s inability to address them. Coby was initially placed in a foster home, but he was moved to a group home on November 1 at the request of the foster family.

The jurisdictional hearing was originally set for November 8, 2011, but it was continued multiple times when Lori did not appear. Robert submitted the matter on the social worker’s reports. The jurisdictional hearing was ultimately continued to December 7, and the court stated that it would go forward regardless of whether Lori was present. The court expressed its belief that Lori was “engaging in some sort of game

playing here” that was resulting in Robert and Coby having to waste a lot of time appearing at hearings.

At the time of the December jurisdictional hearing, the Department reported that Coby was still engaging in very concerning behaviors in his group home placement. He drank alcohol “to the point of being very ill,” created fire hazards with a lighter in his room, angrily broke the dry wall in his room, cursed school staff, and threw things. Coby “has a lot of rage inside of him,” and he “has extreme behaviors.” Lori did not appear at the December 7, 2011 jurisdictional hearing. The court took jurisdiction over Coby, set the dispositional hearing for January 10, 2012, and ordered Lori to be present at that hearing.

Lori had “abruptly disappeared out of Coby’s life” after October 31, 2011, and had no contact with him again until December 29. She cancelled two scheduled visits in November, reporting that she was ill. The social worker tried to reach her, but her phone was disconnected. Lori contacted the social worker in late November about arranging telephone contact with Coby, but Lori did not respond when the social worker returned her call. The Department had referred Lori to a therapist, but Lori did not obtain any therapy. Lori told the social worker that she had attended parenting classes, but she provided no verification. She continued to refuse to recognize that Coby had behavioral problems or that she was in any way contributing to them. Meanwhile, throughout November, Robert was having regular visits with Coby, which were “very positive.” Coby was expressing an interest in returning to Robert’s home, and their relationship seemed to be improving. Lori resumed visiting Coby on December 29, and Coby’s attitude toward Robert “abruptly shifted.” Coby “no longer wanted to reunify.”

Lori did not appear at the January 10, 2012 hearing, and her trial counsel requested a continuance. The Department did not oppose the request, and the court reluctantly granted it. The Department asked the court to “reduce the mother’s visitation to one time per month supervised in a therapeutic setting.” The social worker explained that, during

Lori's nearly two-month absence from Coby's life (from October 31 to December 29, 2011), Coby's behaviors "weren't as severe" and "he was really connecting with his father and wanting to go home." Once Lori resumed visiting him, Coby "suddenly" and "adamantly" stated that he "doesn't want to go home." This was consistent with Coby's "pattern." When Lori was heavily involved in his life, his loyalty to her interfered with his relationship with Robert. Coby's trial counsel agreed that "regular, frequent contact" with Lori "adversely affect[s]" Coby's behavior. Lori's trial counsel opposed the request and asked that this issue "be reserved for trial." The court "temporarily reduce[d] the visitation between now and the next hearing," and the hearing was continued to January 24. This meant that Lori would have no visits between the two hearings.

Lori was present at the January 24 hearing. The social worker reported that, since Lori had resumed visiting Coby in late December, "his attitude and how he speaks about his father has changed dramatically." "When his mother re-entered his life he began speaking very negatively about his father and began refusing to reunify with his father. There were no reported incidents or problems other than renewed contact with his mother." It seemed that "Coby believes that if he accepts his father, he is being disloyal to his mother." The social worker hoped that a psychological evaluation of Lori would help identify the problems and treatment for them that could eliminate Lori's negative impact on Coby.

The social worker testified at the January 24 hearing that Lori continued to deny both that Coby had any behavioral problems and that she was responsible in any way for his problems. Lori also testified at the hearing. She asserted: "Just because Coby and I have a great relationship, and his dad and him don't have such a great relationship, doesn't mean I had anything to do with it." She denied that she had anything to do with Coby's behavioral problems. "He has no rage at my house." Lori believed that Coby's therapists and the family court mediator were biased against her. Coby's trial counsel

informed the court that Coby's "first choice would be to live with his mother." If that was not possible, Coby wanted to work in therapy on repairing his relationship with Robert. Coby also wanted to have as much contact with Lori as possible. The court took the matter under submission and continued the matter to February 3 for decision.

On February 3, 2012, the court removed Coby from Robert's custody, found that it would be detrimental to Coby to be placed in Lori's custody, placed him in foster care, ordered reunification services for both parents, and reduced Lori's visitation to once a month in a therapeutic setting. The court found: "When Coby is away from his mother, we see improvements. When he has reduced visitation, we see his behaviors improving." "[T]he impact [Lori] has on Coby is not good for Coby. And that's not a physical impact; I am referring to the emotional impact that it has on Coby, the negative impact that that relationship has had on Coby over the years." "[The Department's request that Lori's visitation be limited to monthly therapeutic visits] is a pretty draconian request. However, I think it is appropriate in this circumstance because I need to see if Coby can make some therapeutic progress, which we've seen happening when [Lori] was not visiting. Of course the Court will re-assess that at the six-month review and see how Coby's doing and seeing how those therapeutic visits happen." The six-month review hearing was scheduled for July 30, 2012. Lori timely filed a notice of appeal from the court's dispositional order.

## **II. Analysis**

Lori contends that the juvenile court's visitation order was an abuse of discretion because it did not comply with Welfare and Institutions Code section 362.1, subdivision (a)(1) and did not further the goal of reunification.

"[A]ny order placing a child in foster care, and ordering reunification services, shall provide as follows: [¶] (1)(A) Subject to subparagraph (B), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible,

*consistent with the well-being of the child.* [¶] (B) No visitation order shall jeopardize the safety of the child.” (Welf. & Inst. Code, § 362.1, subd. (a), italics added.)

Lori contends that the court’s visitation order was not “consistent with [Coby’s] well-being.” The trial court found that the impact of Lori’s visits with Coby was “not good for Coby” and had a “negative impact” on him. During the two-month period when Lori did not visit Coby, Coby’s behaviors “weren’t as severe,” and “he was really connecting with his father and wanting to go home.” After Lori resumed visiting Coby, Coby adamantly opposed reunifying with Robert. Coby’s negative behaviors had a history of escalating after visits with Lori. At the same time, Lori refused to acknowledge that Coby had any behavioral problems or that she had any responsibility for his behavior, even though she had encouraged Coby to make unfounded accusations of abuse against Robert. This evidence provides ample support for the trial court’s findings that, due to the history of the relationship between Coby and Lori, frequent visits with Lori were inconsistent with Coby’s well-being and that limited visitation would be consistent with Coby’s well-being.<sup>2</sup>

Lori argues that limiting her visitation to monthly visits was inappropriate because there was no evidence that weekly supervised visits with her had jeopardized or would jeopardize Coby’s *physical safety*. Her reliance on *In re C.C.* (2009) 172 Cal.App.4th 1481 (C.C.) is misplaced. C.C. was a case in which the juvenile court suspended visitation entirely. Because the juvenile court did not appear to have based its order on a threat to the child’s “safety,” the Court of Appeal concluded that the juvenile court had violated Welfare and Institutions Code section 362.1 by applying “an incorrect standard,” and its suspension of visitation could not be upheld. (C.C. at pp. 1492-1493.) “[W]hen

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<sup>2</sup> Lori complains that this evidence was “speculation, inferences, and conjecture,” but her attorney stipulated below that the social worker, who provided this evidence, was an expert in risk assessment.



reunification services have been ordered and are still being provided, as they were in this case, *some visitation* is mandatory unless the court specifically finds any visitation with the parent would pose a threat to the child's *safety*." (C.C., at p. 1491, first italics added.) "This strict legislative limitation on suspending or denying *all* parental visitation during the reunification period is no accident: Without visitation of some sort, it is virtually impossible for a parent to achieve reunification." (C.C., at p. 1491, italics added.) While a threat to the child's physical safety may be necessary to support an order of *no* visitation, no such threat is necessary to support an order, such as the one under review here, that permits a parent visitation.

Lori also relies on *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415 (*Tracy J.*). *Tracy J.* was not a challenge to a visitation order. Instead, it involved a contention that the court had erred in terminating services because the parents had not been provided adequate visitation and other services so that they could demonstrate their ability to care for the child. Both parents had been granted just four hours of visitation per week with their infant child. Despite their progress on their case plan and their demonstration of the ability to care for their child, they were never given more visitation because the Department was concerned about the parents' developmental disabilities. (*Tracy J.*, at pp. 1426-1428.) The Court of Appeal concluded that the parents had not been provided with reasonable services due to the inadequacy of visitation and other services, and it therefore ordered the juvenile court to continue services. (*Tracy J.*, at pp. 1427-1428.)

Obviously the case before us, unlike *Tracy J.*, does not involve a claim of inadequate services but a challenge to an interim visitation order. By delineating that Lori's visits be in a therapeutic setting, the court's visitation order was designed to identify the source of Coby's behavioral problems, which had led to the dependency. Unlike the parents in *Tracy J.* who had never been given the opportunity to parent their child, Lori had had custody of Coby for lengthy periods of his life and visitation with him

throughout his thirteen years of life. A temporary limit on her visits with Coby was not likely to deprive the court of information about her ability to parent Coby. The record contains much evidence of the dysfunctional relationship between them. *Tracy J.* does not establish that the court's order was an abuse of discretion.

Lori argues that monthly visits will not further the goal of reunification. There is little hope of reunification with Lori. When Coby was detained, Robert had sole legal and physical custody of Coby, and Lori's visits were limited to supervised visitation due to her long-standing history of contributing to Coby's behavioral problems and sabotaging the relationship between Coby and Robert. The goal here was to enhance the prospect of reunifying Coby and Robert as soon as possible. Because Lori's visits with Coby threatened to divert Coby from working toward reunification with Robert, limiting her visits furthered the goal of reunification between Coby and his custodial parent.

We also reject Lori's claim that the court's order precluded her from progressing on her case plan. By obtaining a psychiatric evaluation and participating in therapeutic visits with Coby, Lori has the opportunity to make significant progress on her relationship with Coby.

The juvenile court's order was not an abuse of discretion.

### **III. Disposition**

The juvenile court's order is affirmed.

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Mihara, J.

WE CONCUR:

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Premo, Acting P. J.

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Elia, J.